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*United States v. Rivas and  
United States v. Davis:  
Effective Representation—  
Who Bears the Burden?*

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*United States v. Rivas and United States v.  
Davis: Effective Representation—Who Bears  
the Burden?*

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The United States Court of Military Appeals has examined the performance of military defense counsel in several recent decisions and expressed concern about the adequacy of their representation.<sup>1</sup> Indeed, Judge Perry in particular has evinced anxiety with respect to representation by military defense counsel because of their "inexperience and the vicissitudes of military practice. . . ." <sup>2</sup> In *United States v. Rivas*<sup>3</sup> he finds circumstances which require reversal because of ineffective assistance of counsel; these circumstances and Judge Perry's approach should be examined for their message to trial defense counsel.

Corporal Rivas, charged with several drug offenses, was on trial before a military judge sitting alone as a general court-martial. His defense was a denial of involvement in any of the drug offenses in contrast to the story of a controlled buy testified to by the two prosecution witnesses, one a confessed drug user turned CID informant and the other a CID agent. In rebuttal, the prosecution called a witness who was allegedly involved with the accused in the drug transaction. The witness corroborated the prosecution's story but balked on cross-examination as to his own involvement, invoking his fifth amendment right against self-

incrimination. After this barrier to cross-examination was raised before the trier of fact, the military defense counsel directed his attention elsewhere to discredit the witness. He succeeded in eliciting an admission by the witness that he "had been recently convicted for possession, transfer, and sale of marihuana and was then serving the sentence therefor, which he hoped would be shortened by his testimony against the applicant. . . ." <sup>4</sup> The military defense counsel, however, made no objection to the witness' refusal to answer, nor did he move to have the direct testimony stricken as a remedy for the refusal to answer certain questions upon cross-examination. <sup>5</sup>

Judge Perry perceived the military defense counsel's inaction under these circumstances to constitute a denial of effective assistance of counsel. He distinguished the situation where the trial judge must act in the absence of appropriate actions by defense counsel to assure that the accused receives a fair trial, <sup>6</sup> because the direct testimony of the rebuttal witness was on its face admissible. That is, a motion to strike such testimony is the procedural remedy for the deprivation of effective cross-examination. Therefore, reasoned Judge Perry, the conduct of the defense counsel in failing to urge that remedy must be scrutinized.

In spite of the possible adverse inferences

which could be drawn from the witness' refusal to answer, the other damaging admissions by the witnesses, as well as the inconsistencies between this witness' testimony and that of the primary prosecution witness, Judge Perry discerned no real tactical or strategic value in allowing the rebuttal witness' testimony to stand. *Quaere*, if viewed from the trial perspective is there not a favorable impact upon the trier of fact in allowing the witness to twist slowly in the wind of his direct testimony with the knot of a self-incrimination refusal around his neck?

Judge Perry does concede that

In some instances, it may even be to the perceived advantage of the defense to retain the direct testimony in the record even in light of the denial of effective cross-examination in a certain area . . . tactical decisions of the sort involved here properly are made by the party subject to be aggrieved. <sup>7</sup>

Judge Perry apparently envisions the defense counsel securing the accused's acquiescence in a tactical decision of this nature, and such may require that "the trial judge must conduct an inquiry *on the record* to establish the necessary information" <sup>8</sup> to comport with current waiver requirements.

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Once Judge Perry determined that the military defense counsel could only have failed to act because of ignorance or oversight of the motion to strike as a remedy for the refusal to answer upon cross-examination, it was a relatively easy progression of logic and law to conclude that the counsel failed to provide effective assistance of counsel. Judge Perry contemplates an interesting choice by defense counsel insofar as tactical consideration as to striking testimony of a witness upon his or her refusal to answer questions put in cross-examination: On the one hand counsel must move to strike or run the risk of being held incompetent; on the other hand, a tactical decision to let the testimony stand requires a knowing waiver by the accused on the record pursuant to inquiry by the trial judge. In the latter instance, the participation of the accused in trial decisions of this kind is questionable—can the accused truly understand the implications of these tactical determinations, and will not the accused in most circumstances merely acquiesce in counsel's decision out of ignorance? The ABA Standards<sup>9</sup> make it clear that the accused only decides what plea to enter, whether to waive jury trial and whether to testify in his or her own behalf; all other decisions are made by the defense counsel after consultation with the accused. To seemingly mandate a procedure which permits the accused a meaningless usurpation of the defense counsel's function appears unnecessary, even if one efficacious result of Judge Perry's decision is that it protects against the defense counsel who is actually unaware of tactical remedies or otherwise negligently overlooks them. In any event, *United States v. Rivas*<sup>10</sup> is a clear signal that when it appears an accused may suffer from the specific actions or inactions of his or her counsel in the trial arena, then the latter must assume the risk of being labelled incompetent counsel on appeal, at least in Judge Perry's view.

Chief Judge Fletcher, concurring in *United States v. Rivas*,<sup>11</sup> observes that "counsel has the primary obligation to make a proper motion, but under the general responsibilities imposed upon the trial judge, that officer cannot sit silently."<sup>12</sup> Thus, Chief Judge Fletcher

would have the onus upon the military judge when there is an apparent constitutional right in issue, such as a denial of cross-examination under the sixth amendment; the responsibility for safeguarding constitutional rights being "the point of demarcation between the adversary system and a trial judge's duty to elicit from a defense counsel his waiver of a right of this dimension."<sup>13</sup>

Chief Judge Fletcher's opinion in *United States v. Davis*<sup>14</sup> provides an interesting contrast to Judge Perry's approach to assessing and affixing responsibility for any damage to an accused stemming from the performance of military defense counsel.

In *United States v. Davis*<sup>15</sup> the accused stood convicted of unlawful possession of a switchblade knife and robbery when the United States Court of Military Appeals considered the case. The issue before the court was "the standard to be employed by an appellate court in evaluating the effect of a conflict of interest upon the right to the effective assistance of counsel under the Sixth Amendment."<sup>16</sup> Private Davis and two others were charged with participation in the robbery alleged. At the pretrial investigation Private Davis and one co-accused, Private G, were represented by Captain S; the other accused, Specialist Four P, was individually represented by Captain W. Subsequent to the investigation, Specialist P and Private Davis were tried in common, represented jointly by Captains S and W as appointed defense counsel. Private G testified at trial for the prosecution, having received a grant of immunity for his testimony. Under these circumstances a potential conflict of interest existed. At trial the military judge queried counsel as to any conflict and allowed the trial to proceed upon counsel's assurance that there was no conflict of interest.<sup>17</sup> Indeed, Captain W conducted a vigorous cross-examination of G who appeared, of course, as a government witness.

On the face of the record there are no certain indicia that Captains W and S were ineffective in their representation of the accused because of their pretrial relationships with the govern-

ment witness *G*. Indeed, *G* may have terminated his relationship with Captains *W* and *S* after securing the grant of immunity. Nonetheless, in the situation where Captain *W* had formed a pretrial attorney-client relationship with a co-accused who subsequently became a government witness, his actions constituted "an abandonment of his client [*Davis*]. . . ." <sup>18</sup>

Any damage to Private *Davis* at trial, however, is not the focal point of the court's concern; rather it is the "failure of the trial judge to ascertain *on the record* the existence of any potential conflicts of interest or divisions of loyalty by the counsel, and to, in turn, advise this accused of the situation as well as its ramifications, and then elicit from him an *informed* decision as to whether he desired to proceed with his counsel or retain/obtain another." <sup>19</sup> Thus, as opposed to the responsibility for assuring an accused's effective representation being placed upon counsel's shoulders in *United States v. Rivas*,<sup>20</sup> the military judge must assume the burden of such in the circumstances of *United States v. Davis*.<sup>21</sup>

The *Rivas* and *Davis* decisions not only provide differing results as to whether the trial defense counsel or trial judge bears the burden as to effective representation; they suggest that military defense counsel and military judges must be increasingly alert to situations in which the adequacy of representation may become an issue. It is certainly understandable that Judge Perry will place the burden of carrying such issues upon counsel, given his experience as counsel, while Chief Judge Fletcher will hold the military judge responsible, given his background as a judge. It should also be clear that the United States Court of Military Appeals is especially sensitive to sixth amendment issues of adequate representation and whether it is the military defense counsel or

the military judge who bears the burden, it is not one to be lightly borne.

### Notes

1. See, e.g., *United States v. Brooks*, \_\_\_ M.J. \_\_\_ (C.M.A. 1977); *United States v. Palenius*, 2 M.J. 86 (C.M.A. 1977); *United States v. Blakey*, 1 M.J. 247 (C.M.A. 1976); *United States v. Evans*, 1 M.J. 206 (C.M.A. 1976).
2. *United States v. Palenius*, 2 M.J. 86, \_\_\_ (C.M.A. 1977).
3. 3 M.J. 282 (C.M.A. 1977).
4. *United States v. Rivas*, 3 M.J. 282, 285 (C.M.A. 1977).
5. See, C. MCCORMICK, HANDBOOK OF THE LAW OF EVIDENCE, § 19 (2d ed. 1972).
6. See, e.g., *United States v. Grunden*, 3 M.J. 41 (C.M.A. 1977); *United States v. Heflin*, 1 M.J. 131 (C.M.A. 1975); and *United States v. Graves*, 1 M.J. 50 (C.M.A. 1975).
7. *United States v. Rivas*, 3 M.J. 282, 286 n.8 (C.M.A. 1977).
8. *United States v. Booker*, 3 M.J. 443, 449 (C.M.A. 1977).
9. ABA Standards, The Defense Function § 5.2 (1970).
10. 3 M.J. 282 (C.M.A. 1977).
11. 3 M.J. 282 (C.M.A. 1977).
12. *Id.* at 289-290.
13. *Id.* at 289.
14. 3 M.J. 430 (C.M.A. 1977).
15. *Id.*
16. *Id.* at 430-431.
17. *Id.* at 432, n. 10.
18. *Id.* at 431. Note that recent change 17 to Army Reg. No. 27-10, Legal Services: Military Justice, Appendix D-2a, (15 Aug. 1977) enunciates policy against multiple representation by military counsel.
19. *Id.* at 432.
20. 3 M.J. 282 (C.M.A. 1977).
21. 3 M.J. 430 (C.M.A. 1977).

## Administrative and Civil Law Section

Administrative and Civil Law Division, TJAGSA

### The Judge Advocate General's Decisions

#### 1. (Enlistment and Induction) In Order For A Constructive Enlistment to be Established,

There Must Be A "Meeting Of The Minds" Between The Individual And The Army. DAJA-AL 1976/6256, 7 Jan. 1977. The Commander, Reserve Components Personnel &

Administration Center, requested an opinion whether, under the facts presented, an individual was a member of the United States Army Reserve as a result of a constructive enlistment. The Judge Advocate General advised that the test of whether there is a constructive enlistment is whether there has been a "meeting of the minds" between the individual and the Army. Although certain circumstances are frequently cited as factors necessary for a constructive enlistment (*e.g.*, voluntary submission to military authority, performance of military duty, receipt of pay and allowances, and unqualified acceptance of services by the government), the mere existence of these factors does not result in a constructive enlistment, nor does the absence of one or more preclude a constructive enlistment. Rather, these factors are only evidence of the requisite intent to consummate an enlistment. This intent is the essential element for establishing a constructive enlistment.

**Note:** The erroneous conclusion might be drawn from recent articles on the subject of constructive enlistment in *The Army Lawyer* (Nov. 1977) and the *Military Law Review* (Summer 1977) that The Judge Advocate General recognizes the four factors in parentheses above as the test of the existence of a constructive enlistment. As correctly indicated in DA Pamphlet 27-21, Military Administrative Law Handbook (1973) at page 3-45, the position of The Judge Advocate General is as stated above.

**2. (Military Installations, Regulations) Dependent Dress Codes Must Relate Directly And Substantially To The Preservation Of Law And Order, Health, Welfare, Morals Or Safety Of The Military Community.** DAJA-AL 1977/5346, 17 Aug. 1977. In response to an inquiry concerning the validity of dress codes, The Judge Advocate General advised that commanders are limited in their ability to enforce appearance standards upon dependents. Unless a particular dress standard relates directly and substantially to the preservation of law and order, health, welfare, morals or safety of the military community, there is no legal

basis upon which to limit a dependent's appearance. Installation commanders may enforce validly promulgated dress codes by denial of post privileges under their jurisdictions (see para. 5-8, AR 210-10). (Dress codes may be applied to military personnel pursuant to AR 600-20 and to civilian employees pursuant to locally promulgated regulations containing standards that are job related. See DAJA-AL 1975/4775, 10 Oct. 1975.)

**3. (Nonappropriated Fund Instrumentalities, Operational Principles) The Playing Of "Break-Open" Bingo In Army Clubs, Under Any Circumstances, Is Prohibited.** DAJA-AL 1977/5152, 22 Aug. 1977. An opinion was requested of The Judge Advocate General as to the legality of playing "Break-Open" bingo in Army clubs. In his opinion, The Judge Advocate General initially notes that paragraph 3-5, AR 230-60, expressly authorizes the playing of bingo on Army installations under exclusive U.S. jurisdiction and other Army installations where the playing of bingo is allowed by the state or host country and approved by the installation commander. Further, para. XIII, DoD Directive 5500.7, and para. 1-17, AR 600-50, specifically prohibit personnel from participating in the conduct of a lottery while on government owned or leased property, or while on duty with the government.

The opinion defines bingo as "a game of chance played with cards having numbered squares corresponding to numbered balls drawn at random and won by covering five such squares in a row", and lottery "as a drawing of lots in which prizes are distributed to the winners among persons buying a chance." "Break-Open" bingo is described as being similar to bingo in that both games involve the purchase of a card consisting of various grid numbers arranged in five rows and columns but that the similarity ends there. In "Break-Open" bingo, winning is not achieved by covering numbered squares on a card corresponding to numbered balls drawn at random, but rather it is accomplished by stripping away the outside facing of a two-part card to reveal a winning combination of numbers. Because no game is actually being played in the popular sense, as

there is in bingo, and prizes are determined by the mere chance of receiving a card which already is a winner, (*i.e.*, by lot) The Judge Advocate General stated that "Break-Open" bingo was a lottery, not bingo, and therefore prohibited by DoD Directive 5500.7 and AR 600-50.

4. (Separation From The Service, Discharge) **EM Convicted By Civil Court And Serving Sentence In Civil Confinement Facility Cannot Be Retired For Physical Disability Until Release From Jail.** DAJA-AL 1977/5261, 28 Aug. 1977. EM (a SSG) was convicted in civil court for distribution of drugs and sentenced to eight years confinement. He was processed for elimination UP AR 635-206, but the board of officers recommended retention. The GCMCA forwarded the case to HQDA for discharge for the convenience of the Government (para. 5-3, AR 635-200). However, ODCSPER determined not to discharge EM. A question then arose whether EM could be discharged for physical disability (a back injury suffered in an automobile accident in 1975) UP Chapter 61, Title 10, United States Code.

The Judge Advocate General expressed the opinion that there are two requisites for retirement UP 10 U.S.C. § 1201: (a) the member must be entitled to basic pay and (b) the physical disability must have been incurred while entitled to basic pay. EM did not satisfy (a) while in confinement (47 Comp. Gen. 214 (1967)). Therefore processing UP AR 635-40 for physical disability could not be accomplished until EM's release from civil confinement and return to military control.

5. (Information and Records, Release and Access; Boards Investigations) **Promises Of Confidentiality To Witnesses Limited To Certain Types Of Investigations.** DAJA-AL 1977/5301, 7 Sept. 1977. In the course of a decision to release the report of a safety investigation (AR 385-40), The Judge Advocate General noted that the recently published Department of Defense Instruction 1000.19 specifically states that promises of confidentiality will be afforded and exemption from release claimed only for incidents involving aircraft or advanced or com-

plex weapons systems. Because the primary reason for denying requests for safety investigations has been to encourage witness cooperation by implying or promising confidentiality, exemption from release may no longer be claimed automatically for reports of safety investigations in which promises of confidentiality are not authorized.

6. (Information and Records, Filing of Information) **Army Not Required To Comply With State Court Order Directing Sealing Of Juvenile Records Relating To Service Member.** DAJA-AL 1977/5294, 9 Sept. 1977. In response to an inquiry from U.S. Army Enlisted Records Center (USAEREC), The Judge Advocate General opined that the Army is not legally bound to comply with orders issued by state courts to seal records relating to prior civil convictions of service members. However, in accordance with applicable provisions of the Privacy Act of 1974 (5 U.S.C. § 552a(e) (5)), military records pertaining to a state conviction should be annotated to reflect any subsequent order of expunction, in order that a member's OMPF be kept accurate, relevant, timely and complete.

It also was pointed out that the DD Form 1966/5 (Application for Enlistment) contains information, certified by the enlistee, which is important to the enlistment process. Thus, the original form should not be destroyed or altered to reflect the new information. If, following enlistment, a member can establish that a modification to the information contained in the enlistment documents is warranted, an additional document may be placed in the member's military records to reflect the correct information.

7. (Prohibited Activities and Standards of Conduct, General) **Use Of Government Computer Must Be For Official Government Business Only.** DAJA-AL 1977/5464, 29 Sept. 1977. The Judge Advocate General was asked if the use of government computer resources by an ADP lieutenant pursuing a non-government funded masters degree, in computer science, would be a violation of paras. 1-10 and 4-2a(4), AR 600-50, March 1972, as changed. Those

paragraphs implemented paragraph X, DoD Directive 5500.7, which states in pertinent part:

DOD personnel shall not directly or indirectly use, take, dispose, or allow the use, taking, or disposing of, Government property or facilities of any kind, including property leased to the Government, for other than officially approved purposes. Government facilities, property, and manpower (such as stationery, stenographic and typing assistance, mimeograph and chauffer services) shall be used only for official Government business.

It was The Judge Advocate General's opinion that computer resources are similar to the other administrative processing services listed above and that their use therefore, must be for official government business only. The term "official government business" is not broad enough to include non-government funded educational pursuits, notwithstanding the fact that the training is indirectly beneficial to the government and therefore "job-related."

8. (Separation from Service, Discharge Characterization) **Physical Condition Of Member Does Not Affect Authority of GCMCA To Approve Or Disapprove Chapter 10, AR 635-200, Request.** DAJA-AL 1977/5610, 7 Oct. 1977. An EM with 14 years service faced a regular SPCM for various offenses authorizing a punitive discharge. He submitted a request for discharge UP Chapter 10, AR 635-200. During his final physical examination processing, a medical board found the EM to be medically unfit due to diabetes melletes. Nevertheless, he was separated UP Chapter 10 with a general discharge. A petition to ABCMR for upgrading followed.

The Judge Advocate General expressed the opinion that the physical condition of the member does not affect the authority of the GCMCA to approve or disapprove a request for discharge submitted pursuant to Chapter 10, AR 635-200. Accordingly, the fact the EM was suffering from diabetes did not preclude his separation.

### Legal Assistance Items

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#### 1. ITEMS OF INTEREST

**Administration—Preventive Law Program.** Based upon tests conducted by the National Bureau of Standards and other available evidence, the Federal Trade Commission advises that reasonable use of electronic video games should not damage TV screens; however, prolonged use of some games may imprint the game pattern on TV screens, in particular, those of black and white sets. For further information contact your nearest regional Federal Trade Commission office or the FTC Office of Public Information (202) 523-3830. L017-VIDGAM. [Ref: Chapter 2, DA PAM 27-12.]

**Commercial Affairs—Commercial Practices And Controls—Federal Statutory And Regulatory Consumer Protections—Truth In War-**

**ranties Act.** Hearings on the Federal Trade Commission's proposed trade regulation rule defining conditions that a warrantor could not impose on a purchaser under a full warranty have been scheduled to begin in Washington, D.C. on December 6, 1977.

The proposed rule, issued under the Magnuson-Moss Warranty Act, would prohibit a warrantor offering a full warranty to require that:

- a consumer assume the costs of mailing a product to or from a warranty service point;
- a consumer return to a warranty service point a product weighing over 35 lbs.;
- a consumer complete and return a registration card shortly after purchase to make the warranty effective; and

- a consumer return a built-in product for service unless the product can be removed without special tools or skills.

[Ref: Chapter 10, DA PAM 27-12.]

**Family Law—Illegitimate Children.** The nationwide trend to eliminate the distinctions between legitimate and illegitimate children, while ongoing in most jurisdictions, has been severely curtailed in New York. The New York Court of Appeals refused to allow an illegitimate son to share any part of his putative father's estate. The decision was rationalized by the New York Court of Appeals as serving a legitimate (no pun intended) state purpose; that purpose being the orderly settlement of estates passing under intestacy laws. The instant case was remanded from the Supreme Court of the United States to the New York Court of Appeals for further consideration in light of the Supreme Court's decision in *Trimble v. Gordon*, 430 U.S. \_\_\_ (1977). The New York court adhered to its previous decision (38 N.Y.2d 77 (1977)). The court distinguishes the Illinois statute in *Trimble* from the New York statute in the instant case. Under the Illinois statute in order for an illegitimate child to inherit from his father he had to prove paternity and that the parents had intermarried. By contrast, under the New York statute the right to inherit depends only on proof that a court of competent jurisdiction has made an order affirming declaring paternity during the lifetime of the father. According to the court, the Illinois statute focused on the requirement that the family relationship be "legitimized" by the subsequent marriage of the parents. Such a statute penalized children born of an "illegitimate relationship" between their parents. The New York statute is concerned only with proof of paternity and establishment of a blood relationship between the father and the child. Further, the court said, *Trimble* did not foreclose the possibility of a state constitutionally requiring as proof of paternity a judicial determination made during the lifetime of the father. In fact the court said that the preference for judicial determination with respect to title to real property has a long and respected history and

provides an available record. By requiring a judicial determination and an order affirming there will then exist a permanent accessible record. Judge Cook, in his dissent, analyzed *Trimble* and found therein the statement that "[t]he more serious problems of proving paternity might justify a more demanding standard for illegitimate children claiming under their father's estates than that required either for illegitimate children claiming under their mother's estates or for legitimate children generally." Further, *Trimble* chastised the Illinois Supreme Court decision in that it failed to consider the possibility of a middle ground between the extremes of complete exclusion and case-by-case determination of paternity. For some significant categories of illegitimates, inheritance rights can be recognized without jeopardizing the orderly settlement of estates or the dependability of titles to property passing under the intestacy laws. Because it (Illinois Revised Statutes, Chapter 3, § 12 [1961]) excludes those categories of illegitimate children unnecessarily, § 12 is constitutionally flawed. The dissent reasoned that the requirement of an order affirming made during the lifetime of the father will, ipso facto, exclude a substantial category of illegitimate children from inheritance. This exclusion will not necessarily result from a lack of proof; if it did the dissent would find it possibly justifiable. In reality the failure to obtain an order affirming will often result simply from the fact that the putative father is supporting and acknowledging the children as his own; or it might well be, and often is, the product of carelessness or ignorance on the part of those who might institute a proceeding within the statutory limitation. The child should not suffer for either of these reasons. Further, the dissent reasoned that ordinarily the order will be obtained only where the natural father is not providing support. The children who are voluntarily supported, no matter how compelling the proof, will be absolutely barred if such an order is not obtained. *In re Lalli*, \_\_\_ N.Y.2d \_\_\_ (1977); [1977] 4 FAM. L. REP. 2092. [Ref: Chapter 23, DA PAM 27-12.]

**Family Law—Infants Or Minors.** The United

States District Court for the Seventh District of Florida holds that the due process clause of the fourteenth amendment to the United States Constitution requires that parents in dependency proceedings be advised of their right to assistance of counsel, and if indigent, that counsel be appointed unless they knowingly and intelligently waive their right to counsel. In the instant case the mother of the infant left her husband because he beat the infant until he broke the infant's arm. The mother, Hillary Davis, turned to the state for help. The state immediately responded by initiating a dependency proceeding under the Florida statutes to remove the infant from the mother's custody. At the initial hearing before a Circuit Court Judge of Dade County, the state sought an order directing the hospital to release the infant to the state. Hillary Davis attended the hearing without counsel. The Judge did not offer to appoint counsel for Hillary Davis but advised her to have counsel at the adjudicatory hearing. Hillary Davis, because she was indigent, was unable to retain private counsel and was unsuccessful in her attempts to secure the services of an attorney employed by Legal Services of Greater Miami, Inc. Dependency adjudicatory hearings proceeding pursuant to Florida law are quite complex. The state must prove its case by the preponderance of the evidence and the rules of evidence generally applicable to civil proceedings apply. The state is represented by counsel, but the statute neither authorizes nor requires the appointment of counsel to represent indigent parents. Hillary Davis attended the adjudicatory proceedings without benefit of counsel. She was ignorant of the law of evidence and of the substantive law governing the proceedings. She reluctantly consented to what she believed would be the place with the state for a few weeks. During the adjudicatory hearing conducted by the Juvenile Division Court, Hillary Davis was not asked if she wished to be represented by counsel, nor did the court offer to appoint counsel to represent her. Her infant son was adjudicated dependent and committed to the temporary custody of the state. At the conclusion of the hearing the court advised Hillary Davis to contact a lawyer but she was not advised of her

right to appeal from the decision of the adjudicatory hearing. Subsequent to the adjudicatory hearing Hillary Davis secured a dissolution of her marriage. She was able to obtain weekend home visits with her son and, a full year after the child abuse incident she secured the return of her son subject to the continuing supervision and under the continuing jurisdiction of the Circuit Court.

In proceedings which are held to determine custody "[R]ights far more precious than property rights will be cut off. . . ." *May v. Anderson*, 345 U.S. 528, 533 (1953). In *Stanley v. Illinois*, 405 U.S. 645 (1972) the court held that a conclusive presumption of unfitness for unwed fathers was constitutionally impermissible, and that unwed fathers were entitled to notice and the hearing before termination of parental rights. In defining the right at stake, the court held that "[t]he rights to conceive, and to raise one's children have been deemed 'essential' . . . 'basic civil rights of man'. . . ." 405 U.S. at 651. So the conclusive presumption of unfitness was examined with strict scrutiny and found constitutionally defective. In the instant case the court compared the indigent party in the adjudicatory hearing on dependency to the defendant in a criminal case. The court cited *Griffin v. Illinois*, 351 U.S. 12, 19 (1952) wherein the Supreme Court stated that when a state grants appellate review of convictions, it cannot do so "in a way that discriminates against some convicted defendants on account of their poverty . . . there can be no equal justice where the kind of trial a man gets depends on the amount of money he has." The court cited other cases in the criminal realm which hold that the equal protection clause requires provision of counsel to indigent criminal defendants in appeal which are a matter of right, and used those cases to reach the conclusion that when the state undertakes to deprive an indigent individual of a fundamental interest or impose upon him a significant stigma through a formal judicial proceeding, it must provide that individual with the same tools which a financially able individual can obtain to appeal from that action.

While a dependence proceeding is not a crim-

inal proceeding, the court stated, it is substantially similar. The state is the initiating party, the proceeding is formal, and the potential loss is quite substantial. Unless the state can provide a compelling state interest in not providing counsel, it must provide counsel to indigent parents when it is threatening the deprivation of a fundamental interest. Parents in dependency proceedings are more likely to retain custody of their children if represented by counsel. Thus, the state has a compelling interest in not providing counsel. Therefore, the equal protection clause of the fourteenth amendment requires the provision of counsel to indigent parents in dependency proceedings. *Davis v. Page*, \_\_\_ F. Supp. \_\_\_ (D. Fla. 1977); [1977]4 FAM. L. REP. 2091. [Ref: Chapter 22, DA PAM 27-12.]

**Family Law—Support of Dependents—Judicial Enforcement Of Support Obligations.** Ralph and Frances Overman were divorced in 1968. The divorce decree ordered Ralph to make alimony and child support payments to Frances. Subsequently Ralph secured a job with the Veterans' Administration and fell behind in his support obligation. Frances then secured a writ of garnishment under 42 U.S.C. § 659, the Federal Garnishment Act. The Veterans' Administration was served with the writ and advised Ralph that it would honor the garnishment. Ralph filed suit in state court alleging that the garnishment was unauthorized and illegal because it was based on a fraudulently-procured Tennessee divorce decree. The state court then issued an order to show cause why a temporary injunction should not be granted, and temporarily restrained the United States from honoring the writ. The United States Attorney for the Eastern District of Missouri, the state in which the action was filed, removed the action to federal district court. Ralph filed a motion to remand, but the district court overruled that motion. The federal defendant filed a contemporaneous motion to dismiss for want of subject matter jurisdiction and for failure to state a claim. (The court construed the motion as one to dismiss for want of personal jurisdiction over an indispensable party.) The court granted that motion after de-

termining that Frances was an essential party but had not been properly served. Ralph subsequently moved to set aside or amend the order of dismissal and that motion was denied. Ralph then brought this appeal. The court noted that it is a matter of grave concern whether a domestic relations suit ought to come before a federal court in any aspect, even though a federal officer (the disbursing officer) in an official capacity may be implicated in a peripheral fashion. With rare exceptions, the court noted, such disputes traditionally have been subject to exclusive state jurisdiction. But in this case the government is seeking to avoid the cross fire of simultaneous, conflicting state decrees: a Tennessee garnishment writ and a Missouri court order to ignore that writ and continue paying Ralph his salary pending the Missouri State Court hearing. The authority for the government to seek protection in the federal forum lies in 28 U.S.C. § 1442(a)(1) (1970), as the disbursing officer in the instant case is involved in this action because of his acts under color of his office and in his official capacity. Accordingly, the court held that the federal district court properly refused to remand the case to the state court as long as the United States and its disbursing officer remained parties. The court then considered the federal defendant's motion to dismiss the complaint under Federal Rule of Civil Procedure 12b for want of subject matter jurisdiction and for failure to state a claim upon which relief could be granted. The district court did not address the federal defenses, but rather addressed the issue of whether Frances had become a party by service or appearance. The court opined that the district court erred in not addressing the federal defenses because "one of the most important reasons for removal is to have the defense of official immunity tried in federal court." *Willingham v. Moran*, 395 U.S. 402, 407 (1969). The court then considered the defense of sovereign immunity as applicable to the garnishment procedure. The government noted that 42 U.S.C. § 659 does not authorize this action against the federal defendants and that the appellant pointed to no other statutes or any other ground permitting him to sue the government. In 42 U.S.C. § 659 the United

States waived its immunity from state garnishment actions directed at federal employees. The statutes simply removed the bar of sovereign immunity to one narrow class of actions, that being enforcement of garnishment writs issued by state courts. Nothing in the statute or in the legislative history indicates any congressional intent to expose the government to wider liability. The statute does not waive governmental immunity to other kinds of law suits and the court would not imply any waiver in the suit such as the present suit where the debtor, in challenging the validity of the garnishment, seeks to litigate the validity of the underlying divorce decree. The court held that 42 U.S.C. § 659 does not allow the United States or its fiscal officer to be sued for any purpose other than enforcement of the legal obligation to provide child support or alimony payments. Under § 659 the United States must respond to garnishment to the same extent as a private person for similar legal process and only to that extent. Accordingly, the court held that the plaintiff's complaint states no complaint against the United States within the bounds of actions authorized under § 659. The court remanded the balance of the controversy to the state court, for the controversy concerned a matter that was within the exclusive province of the state courts. [Ref: Chapter 26, DA PAM 27-12.]

## 2. ARTICLES AND PUBLICATIONS OF INTEREST

**Commercial Affairs—Commercial Practices and Controls.** Kosmin, *The Small*

*Claims Court Dilemma*, 13 HOUS. L. REV. 934 (1976).

**Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Protection—Truth in Lending Act.** Griffith, *Truth-in-Lending: Some Aspects*, 26 DEPAUL L. REV. 566 (1977).

**Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Protections—Preservation of Consumers' Claims and Defenses.** Comment, *Implied Consumer Remedy Under FTC Trade Regulation Rule—Coup de Grace Dealt Holder in Due Course*, 125 U. PA. L. REV. 876 (1977); Note, *The FTC's Preservation of Consumers' Claims and Defenses: Consumer Security or Consumer Fraud?*, 11 VAL. L. REV. 263 (1977).

**Commercial Affairs—Commercial Practices and Controls—Federal Statutory and Regulatory Protections—Fair Credit Reporting Act.** Comment, *Fair Credit Reporting Act: The Case for Revision*, 10 LOY. L. REV. 409 (1977).

**Family Law—Domestic Regulations—General.** Wadlington, *Sexual Relations After Separation or Divorce: The New Morality and the Old and New Divorce Laws*, 63 VA. L. REV. 249 (1977).

### Family Law in the Fifty States: An Overview

*Doris Jonas Freed and Henry H. Foster, Jr.*

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### INTRODUCTION

Contemporary values and the reasonable or

even unreasonable expectations of spouses (and nonmarital partners) are reshaping the law of marriage and divorce in this country and we have reached a point of no return. By court decision and statute we have loosened the bonds of matrimony and have changed the rules of the game.

It is well to remember, however, that one swallow does not a summer make, and that a California decision may not necessarily be a harbinger of a national trend. The media, committed to making mountains out of molehills and to sensationalizing the obscure, would have it otherwise, but there still remains a substantial nucleus in our traditional law of marriage and divorce, and family stability continues to be an important social objective. One may reasonably argue that there is more evolution than revolution in matrimonial law.

It thus may be of interest to try to differentiate definite national trends from occasional aberrations in family law. This overview will concentrate on legislative changes that have attracted widespread support and will look at the forest rather than the trees. It will not cover, as such, decisional law and mutations in common-law doctrine. In the tables there are up-to-date lists of the states which have recently changed their statutes relative to grounds for divorce, defenses, property distribution, alimony, durational residency requirements, or custody jurisdiction, or have improved enforcement procedures. There is also a tabulation of reactions to certain recognized trends.

The current situation regarding no-fault grounds for divorce is that only Illinois, Pennsylvania and South Dakota still have fault grounds only. Illinois, despite a bitter struggle in the legislature, failed to pass a no-fault divorce bill, although a new law abolishes the defense of recrimination as well as that of condonation where the condonation took place after the suit was filed. It is also anticipated that in the very near future further reform will take place in Illinois by means of a new law making provision for equitable distribution of all property upon divorce, provisions for independent

representation for children, for divorce to both parties when warranted by the facts in the case, and provisions for consideration of the non-monetary contribution of a homemaker. Moreover, the Pennsylvania legislature the last we heard was considering the enactment at this session of a living apart ground with a shorter or longer term depending upon whether the living apart was voluntary. It also appears that the South Dakota legislature recently rejected a proposed breakdown ground.

In addition to the consensus favoring no-fault divorce, there has been a complementary decrease in the defenses to divorce, which is merely one other way of skinning the cat. An increasing number of common law property states (now approximately 34) also provide for the equitable distribution of marital property upon divorce. More states expressly provide that non-monetary contributions of a homemaker should be considered in setting alimony or the distribution of marital property.

With reference to children, the most heartening advance within the past year has been the more than doubling of the number of states which have enacted the Uniform Child Custody Jurisdiction Act. Now there are approximately twenty. There also has been some movement towards the discretionary appointment of counsel to represent children in contested custody cases and the dilution or elimination of the customary "tender years" doctrine. Consideration is being given on the Congressional and state level to more effective criminal statutes to deter child-snatching and to elicit the investigating services of the FBI and state law enforcement officials in such cases.

The elimination of sex discrimination in the law of alimony made no further progress during the past year and the situation remains unchanged, although a New York trial judge in a questionable decision held that it was unconstitutional to award alimony only to wives. [See *Thaler v. Thaler*, 391 N.Y.S.2d 331, 3 FLR 2217 (N.Y. Sup. Ct. 1977)].

Among other significant changes in the laws of the American jurisdictions not covered in this overview, the following have been re-

ported by state representatives appearing in the Family Law Section's Panel on the Laws of the Fifty States, chaired by Harry Hall of Atlanta, Georgia and Susan Wendell Whicher, of Wheat, Colorado, on August 5, 1977, in Chicago, Illinois.

New cohabitation laws empowering the court to reduce or eliminate post-divorce alimony are now in effect in Georgia (where a "live in lover" law empowers the court to modify alimony where a former wife is "openly and notoriously" living with a paramour), and in Connecticut (where the court may suspend, alter or delete court-ordered post-dissolution alimony where the recipient is living with another "person", and by reason thereof, no longer needs it).

In the child support area, parents of an adult incompetent child may be compelled to contribute support in Hawaii. New Mexico has joined the growing number of states where both parents may be held liable for child support, as has Maryland (by court decision).

In child custody cases court-ordered separate representation of children may be required in an increasing number of states, among which are now California, Connecticut, Maryland (by court decision), and the Virgin Islands (regardless of parental agreement provisions for child custody).

Connecticut has recently enacted an Enforcement of Matrimonial Foreign Judgments Act which makes it quick and easy to convert a foreign judgment for alimony, support and custody into a Connecticut judgment, and Colorado has joined those states which have enacted the Uniform Parentage Act.

## TABLES

- I. Grounds for Divorce
- II. Elimination of Traditional Defenses
- III. Trends
- IV. Distribution of Property
- V. Alimony (Maintenance)
- VI. Durational Residency Requirements
- VII. Changes in Child Support and Custody
- VIII. Better Enforcement Techniques

## I. GROUNDS FOR DIVORCE

As of August 1, 1977, only three American jurisdictions still retain the old "fault only" grounds for divorce: Illinois, Pennsylvania and South Dakota. Reform is in the wind in these states, however. There are now 31 states with the irretrievable breakdown ground. In some 15, it is the sole ground; in the remaining 16 it has been added to traditional fault grounds:

### A. Irretrievable Breakdown Sole Ground In:

1. Arizona
2. California (plus insanity)
3. Colorado
4. Delaware (provable only by fault grounds or voluntary separation or separation due to incompatibility)
5. Florida (plus insanity)
6. Iowa
7. Kentucky
8. Michigan
9. Minnesota (provable only by fault grounds, 1 year's voluntary separation, proof of marital discord or commitment for mental illness)
10. Missouri (provable by fault grounds, mutual consent, or 2 years' living apart)
11. Montana
12. Nebraska
13. Oregon
14. Virgin Islands
15. Washington

### B. Breakdown Added To Traditional Grounds:

1. Alaska (irretrievable breakdown caused by incompatibility)
2. Alabama
3. Connecticut
4. Georgia
5. Hawaii
6. Idaho (irreconcilable differences determined by court to be substantial reasons for not continuing marriage)
7. Indiana
8. Maine (irreconcilable differences and marriage breakdown)
9. Massachusetts (irretrievable breakdown plus separation agreement or if no agreement, hearing no earlier than 24 months after complaint filed)

10. Mississippi (eff. July 1, 1976) (irreconcilable differences where no contest or denial and where separation agreement approved by court)

11. New Hampshire (irreconcilable differences caused by irretrievable breakdown of marriage)

12. North Dakota (irreconcilable differences found by court to be substantial reasons for not continuing marriage)

13. Texas (insupportability)

14. Tennessee (irreconcilable differences if defendant personally served and no contest or denial and separation agreement approved by the court)

15. Rhode Island (irreconcilable differences)

16. Ohio (Joint Bill—parties must execute separation agreement and reaffirm agreement in court)

*C. Incompatibility States:*

1. Alabama
2. Alaska
3. Connecticut (plus living apart 18 months)
4. Kansas
5. Nevada
6. New Mexico
7. Idaho

*D. Living Separate and Apart:*

1. Arkansas (3 years)
2. Connecticut (18 months due to incompatibility)
3. District of Columbia (6 months voluntary; 1 year involuntary)
4. Hawaii (2 years)
5. Idaho (5 years)
6. Louisiana (2 years)
7. Maryland (voluntary 1 year—involuntary 3 years)
8. Nevada (1 year, in court's discretion)
9. New Jersey (18 months)
10. New York (1 year—living apart pursuant to judgment of judicial separation or separation agreement)
11. North Carolina (1 year)
12. Ohio (living apart 2 years and also on petition of both spouses and execution of separation agreement confirmed by appearance in court by both)
13. Puerto Rico (2 years)

14. Rhode Island (3 years)
15. South Carolina (3 years)
16. Texas (3 years)
17. Utah (3 years plus decree of separate maintenance)
18. Vermont (6 months)
19. Virginia (1 year)
20. West Virginia (2 years)
21. Wisconsin (1 year voluntary)
22. Wyoming (2 years, without fault on part of plaintiff)

*E. Conversion From Judicial Separation or Separate Maintenance:*

1. Alabama (2 years after decree of judicial separation or separate maintenance)
2. District of Columbia (after divorce from bed and board in effect 1 year—conversion only by innocent spouse)
3. Hawaii (2 years living apart pursuant to decree of bed and board or separate maintenance)
4. Louisiana (1 year living apart by plaintiff—1 year 60 days by defendant)
5. New York (1 year living apart after decree of judicial separation or separation agreement)
6. North Dakota (decree of separation in effect over 4 years and reconciliation improbable)
7. Tennessee (2 years after separation from bed and board)
8. Utah (3 years living apart under decree of separation or decree of separate maintenance of any state)
9. Virginia (after divorce from bed and board in effect 1 year)
10. Wisconsin (1 year living apart pursuant to decree of legal separation)

*F. Mutual Consent Divorces:*

1. Mississippi (irreconcilable differences upon joint bill or where defendant personally served and no contest or denial).
2. Ohio (petition by both spouses, and execution of separation agreement and confirmation of agreement in court by both spouses).
3. Tennessee (irreconcilable differences if defendant personally served and no contest or denial and court approves separation agreement executed by the parties).
4. New York (In a sense New York belongs

in this category because execution of separation agreement or obtaining legal separation is an implied consent to divorce by either a year later).

5. Missouri (if joint petition alleges, or one side alleges and other fails to deny, irretrievable breakdown).

## II. ELIMINATION OF TRADITIONAL DEFENSES

Eroding of defenses against divorce:

a. Practically every state has *abolished* some defenses, to wit, Illinois has now abolished recrimination and condonation occurring after suit is filed.

b. Some states have abolished *certain defenses only to certain grounds*.

c. Some states have *abolished all defenses* (14):

1. Arizona
2. California (misconduct bears on child custody)
3. Colorado
4. Delaware
5. District of Columbia (none by statute)
6. Indiana
7. Kentucky
8. Minnesota (none, except by case law)
9. Missouri
10. New York (except to adultery)
11. Ohio (defenses only by case law, recrimination, reconciliation and res judicata are defenses)
12. Oregon
13. Utah (none except by case law)
14. Virgin Islands

## III. TRENDS

A. Recognition that *role of spouse* as a) homemaker; b) parent; or c) contribution to career of other—shall be given recognition as contribution to assets of marriage:

1. Colorado
2. Delaware
3. Indiana
4. Kentucky
5. Maine

6. Michigan
7. Mississippi
8. Missouri
9. Montana
10. Nebraska
11. New Hampshire
12. Ohio
13. Pennsylvania
14. Virginia

B. Property distribution statutes often enumerate specific criteria as guides to courts. Examples of criteria: 1) length of marriage; 2) age, health, station in life; 3) occupation; 4) amount and sources of income; 5) vocational skills; 6) employability; 7) estate, liabilities and needs of each party and opportunity of each for further acquisition of capital assets and income; 8) contributions of each party in acquisition, preservation or appreciation of marital property, including services as a homemaker.

Among states *listing specified criteria* are:

1. Arizona
2. Colorado
3. Connecticut
4. Delaware
5. Indiana
6. Kentucky
7. Maine
8. Massachusetts
9. Minnesota
10. Missouri
11. Montana
12. Nebraska
13. Ohio
14. Oregon
15. Virginia
16. Washington

C. Marital Misconduct: Trend toward minimizing its importance:

1. States expressly or impliedly excluding marital fault from consideration in awarding alimony or distributing nproperty:

1. Alaska
2. Arizona
3. California
4. Colorado
5. Delaware

6. Kentucky (relevant as defense on amount of alimony)

7. Montana
8. Ohio
9. Oregon
10. Washington
11. Virgin Islands

2. States which regard marital fault as a discretionary factor which may be considered:

1. Alabama
2. Arkansas
3. Florida (where adultery)
4. Massachusetts
5. Michigan (conduct of the parties is held relevant in all ancillary matters)
6. Minnesota (by case law)
7. Nebraska
8. Nevada
9. New Jersey
10. Rhode Island
11. South Dakota
12. Wyoming

3. States making marital misconduct an automatic bar to alimony:

1. Louisiana
2. New York (for any fault ground)
3. North Carolina (where adultery)
4. Puerto Rico
5. Rhode Island
6. South Carolina (where adultery)
7. Tennessee
8. Virginia (for any fault ground)
9. West Virginia (where adultery)
10. Wisconsin (where adultery)

4. Following states make no mention of marital fault in alimony and marital property statutes:

1. Hawaii
2. Illinois
3. Indiana
4. Iowa
5. Kansas
6. Maine
7. Maryland
8. Massachusetts
9. Minnesota
10. Nebraska
11. Nevada

12. New Hampshire
13. New Mexico
14. North Dakota
15. Oklahoma
16. Pennsylvania
17. Utah
18. Vermont
19. Wyoming

5. Following states make *economic* misconduct a fact to be considered:

1. Delaware
2. Indiana
3. Montana

#### IV. DISTRIBUTION OF PROPERTY

1. *Distribution of Property Upon Divorce in Community Property Jurisdictions of:*

1. Puerto Rico
2. Arizona
3. California
4. New Mexico
5. Nevada
6. Idaho
7. Louisiana
8. Texas
9. Washington

Traditionally fault has been important as to amount of distribution or as a bar to distribution. Except in California, Arizona and Washington, and in some cases in Louisiana, marital misconduct may decrease or eliminate guilty party's share of community property distribution. In California, Louisiana and Washington, there normally is an equal division of the community. In the other community property states there is an equitable distribution.

2. *Distribution of Property in Common Law Property Jurisdictions:*

A. Common-law property states where courts have no general or equitable power to distribute property and title alone controls—subject to constructive trusts and tracing of equitable title.

1. Florida
2. Maryland (personalty only)
3. Mississippi
4. Rhode Island

5. South Carolina (the legislature has now empowered the court to distribute personal property).

6. Tennessee
7. Virginia
8. West Virginia
9. New York

B. There are now about 34 common-law property states where the court have equitable jurisdiction to distribute property. These states are:

1. Alabama (as alimony only)
2. Alaska
3. Arkansas
4. Colorado
5. Connecticut
6. Delaware
7. District of Columbia
8. Georgia (as alimony only)
9. Hawaii
10. Illinois (property may be distributed as "alimony")
11. Indiana
12. Iowa
13. Kansas
14. Kentucky
15. Maine
16. Massachusetts
17. Michigan
18. Minnesota
19. Missouri
20. Montana
21. Nebraska
22. New Hampshire
23. New Jersey
24. North Carolina (as alimony only)
25. North Dakota
26. Ohio (as alimony only)
27. Oklahoma
28. Oregon
29. South Dakota
30. Tennessee
31. Utah
32. Vermont
33. Wisconsin
34. Wyoming

Note: Some states permit only property accumulated during the marriage to be distributed, whereas other states permit premarital

separate property as well to be distributed. The state of the law puts a premium on the drafting of antenuptial and separation agreements.

#### C. *Criteria for Distribution:*

1. Elaborate and specific standards for equitable distribution are set forth in the law of an increasing number of states.

2. Other states distribute property according to general standards of equity and justice (laws contain no specified statutory criteria).

#### *Among criteria we find generally:*

1. Contributions of each spouse to marriage, marital assets, and financial condition of spouse seeking alimony and spouse from whom maintenance is sought;

2. Duration of marriage, age, health (emotional and physical), circumstances of the parties, and pre-separation standard of the living;

3. Present and prospective earnings of each party, needs of custodial parent, desirability of custodial parent working or remaining in home to care for children.

### V. ALIMONY (MAINTENANCE)

1. Concept changed as to alimony in many states. It is called *maintenance*.

2. Increasingly no-fault oriented.

3. *Trends*—To downgrade marital fault by:

a. Specifically *excluding* it as a factor (as in Alaska, Arizona, Colorado, Delaware, Montana, Oregon, Virgin Islands and Washington) or

b. Eliminating it from the specified criteria by not mentioning it.

4. It has been *desexed*—available to either party in 35 or more jurisdictions.

5. Based on actual *need* and *ability* to pay.

6. Awarding for a limited time to allow recipient to become self-supporting.

7. In at least thirty-five states, the court *may* award maintenance to either spouse; in

some states courts empowered to make "lump sum" alimony awards.

8. In some states, statutory provisions giving court authority to require security for maintenance payments.

Alimony (Maintenance) to Either Party:

1. Alaska
2. Arizona
3. California
4. Colorado
5. Connecticut
6. Delaware ("dependent" spouse)
7. Florida
8. Hawaii
9. Illinois
10. Indiana ("physically or mentally handicapped")
11. Iowa
12. Kansas
13. Kentucky
14. Maryland
15. Massachusetts
16. Minnesota
17. Missouri
18. Montana
19. Nebraska
20. Nevada (to wife or to husband if disabled or unable to provide for himself)
21. New Hampshire
22. New Jersey
23. New Mexico
24. North Carolina ("dependent" spouse)
25. North Dakota
26. Ohio
27. Oklahoma
28. Oregon
29. Utah
30. Vermont
31. Virginia
32. Virgin Islands (to either if in need)
33. Washington
34. West Virginia
35. Wisconsin (to either party except to party guilty of uncondoned adultery)

States which allow maintenance to wives only:

1. Alabama
2. Arkansas

3. District of Columbia
4. Georgia
5. Idaho
6. Louisiana
7. Maine
8. Mississippi
9. New York
10. Rhode Island
11. South Carolina
12. South Dakota
13. Tennessee
14. Wyoming

States which do not award alimony upon absolute divorce:

1. Pennsylvania
2. Texas

## VI. DURATIONAL RESIDENCY REQUIREMENTS

Current Trend:

1. Cutting down periods of time.
2. G.I. Statutes—Increasing now in great number of states.

In some states no durational residency required—just bona fide residence or domicile, e.g., Utah and Washington and most recently Illinois.

Current durational residency requirements, examples:

- Arizona—90 days
- Colorado—90 days
- Delaware—3 months
- District of Columbia—lowered to 180 days (from 1 year)
- Hawaii—lowered to 180 days (from 1 year)
- Kansas—60 days
- Kentucky—180 days
- Michigan—180 days
- Missouri—90 days
- Montana—90 days
- Utah—residence in state

Washington—residence in state—court does not act for 90 days after petition filed.

Wyoming—60 days by plaintiff unless marriage in state and petitioner resident at time of filing petition in which case no durational residency requirement.

## VII. CHANGES IN CHILD SUPPORT AND CUSTODY

Since 1970, majority of new state laws make child support the obligation of both parents, rather than as formerly, the primary obligation of the father. Courts consider *respective* financial condition of father and mother.

Custody—also being desexed:

Majority of state statutes for a long time provided equal right of custody in both parents, but courts for most part ignored this and mother prevailed in at least 90 percent of all contested custody cases. Since 1970, Colorado, Florida, Indiana, Oregon, Wisconsin, Texas and a growing number of other states, provide that there shall be presumption favoring either parent because of sex. In North Carolina a recent law to this effect has been enacted.

Articulated standards for custody in majority of new statutes, such as:

1. Age and sex of child.
2. Wishes of child and parents.
3. Interreaction and interrelationship of child with parents and siblings.
4. Child's adjustment to home, school and community.
5. Mental and physical health of all parties.

Such guidelines in Arizona, Kentucky, Missouri and Washington and others. Best criteria in Michigan—emphasis on factors furthering child's welfare, such as, emotional and psychological factors which go into meaningful parent-child relationship.

Many new statutes provide for appointment of guardian ad litem or attorney to represent child in marital dissolution where custody is at issue. Provisions in a number of laws for investigations and reports. *Query*: Should not all separation agreements (even where uncontested) be scrutinized as to adequate protection for child?

### UNIFORM CHILD CUSTODY JURISDICTION ACT

The Uniform Child Custody Jurisdiction Act, the basic purposes of which are to discourage

continued controversies over child custody in the interest of stability of home environment for the child, to deter child abductions and like practices, and to promote interstate assistance in adjudicating custody matters, is being adopted by an increasing number of states. Whereas a year ago, the number of states was only nine, today about twenty states have adopted the Act. Among these are Alaska, California, Colorado, Delaware, Florida, Hawaii, Indiana, Iowa, Maryland, Michigan, Minnesota, Missouri, New York, Montana, North Dakota, Ohio, Pennsylvania, Oregon, Wisconsin and Wyoming.

## VIII. BETTER ENFORCEMENT TECHNIQUES

1. Long-Arm Statutes Specifically Applicable to Alimony and/or Support (for wife and children):

1. California
2. Connecticut
3. Florida
4. Idaho
5. Indiana
6. Illinois
7. Kansas
8. Massachusetts
9. Michigan
10. Nevada
11. New Mexico
12. New York
13. Ohio
14. Oklahoma
15. Tennessee
16. Texas
17. Utah
18. Wisconsin

[For an interesting case see *Kulko v. Horn*, 564 P. 2d 353, 3 FLR 2486, (Calif. 1977)].

2. *Uniform Support of Dependents Act (N.Y.)*

*Uniform Reciprocal Support Act—Other States*—New York Act must be changed to include ex-wives. 29 other states include ex-wives.

3. *Federal IV-D Program*

Garnishment of Wages of all Federal employ-

ees, including those in armed services, but new limitation as to amount of garnishment.

Federal and State Locator Services.

File Search.

Enforcement in Federal Court by Internal Revenue Service if all else fails.

(Many millions of dollars in arrearages already have been collected since this act in effect.)

4. An increasing number of states require payment of maintenance and child support directly to an official in the court who keeps record of arrears, sends for nonpaying spouse, and often court then requires security for future payments.

5. Some states provide for wage deductions after one or more defaults and forbid employers to discharge employees because of wage deductions for alimony or child support.

## Observance of Law Day USA 1978

*The following letter is from The Judge Advocate General*

DAJA-ZA

24 January 1978

SUBJECT: Observance of Law Day USA 1978

### ALL STAFF JUDGE ADVOCATES

1. By joint resolution of Congress and Presidential Proclamation, the first day of May each year is designated as Law Day, USA. The purpose of this annual observance of Law Day is to emphasize the place of law in our lives and to encourage all Americans to reflect upon the benefits of living in a society founded upon and dedicated to the principles of equality and justice under law. The American Bar Association has designated "The Law: Your Access to Justice" as the theme for Law Day 1978.

2. As in the past the Corps should assume the responsibility of conveying the spirit of Law Day to both the military and civilian communities. I personally urge each Staff Judge Advocate to designate a Law Day Chairperson and to take all necessary steps toward supporting the 1978 theme and to expand this year's observance through maximum cooperation with local educational and civic groups, news media, and bar associations. To assist you, the American Bar Association has been requested to distribute Law Day materials to all Army Judge Advocate offices. A description of the Corps' participation in the 1977 observance can be found in the August issue of *The Army Lawyer*.

3. The Law Day 78 theme provides an excellent opportunity to inform all Americans of the Bar's ongoing efforts to improve the judicial system and make access to justice more readily available. This opportunity should be accorded the most serious attention. Effective Law Day activities serve as a vehicle to broaden the scope of public understanding about the role of lawyers in our society and the legal profession in general.

4. In conjunction with Law Day 1978 activities I desire that all personnel of the Staff Judge Advocate office, to include legal clerks, legal technicians, and legal secretaries be included in the celebration of Law Day. To facilitate such non-attorney participation, Law Day co-chairpersons should be appointed to represent the enlisted legal sections and the legal secretaries to serve along with the attorney Law Day chairperson in coordinating local office activities in celebration of Law Day.

WILTON B. PERSONS, JR.  
Major General, USA  
The Judge Advocate General

## Third Annual JAG Mutual Support Conference

*Reserve Affairs Department, TJAGSA*

Active and reserve JAG personnel from the Army, Navy, Marines and Coast Guard, as well as attorneys from the civilian community, gathered on 3 December 1977 at the Officers' Club, Great Lakes Naval Training Center, Illinois, to attend the Third Annual JAG Mutual Support Conference. The conference was co-hosted by Colonel Robert J. Dempsey, Commander, 7th JAG Military Law Center, Chicago, and Lieutenant Colonel James C. Su-Brown, Staff Judge Advocate, Fort Sheridan. The one day program was designed to provide an opportunity for active and reserve military and civilian attorneys to exchange information and offer suggestions for effective interaction between the reserve and active components as well as the related areas of concern between the military and civilian legal communities.

Brigadier General James M. Demetri Spiro, former Chief Judge, USA Judiciary (MOB DES), made the opening remarks on the importance of mutual support in today's Army, and how well it has been implemented on a year-round basis at Fort Sheridan. General Spiro stressed the importance of the reserve judge advocate remaining current with present day military doctrine, and at the same time, noted how the active military legal community has been enriched by the infusion of new ideas and methods from reserve judge advocates.

Colonel Robert J. Dempsey, Commander, 7th JAG Military Law Center, followed General Spiro's opening remarks with a history of mutual support at Fort Sheridan and stressed the importance of the reserve and the active duty judge advocate officers working together in partnership.

A notable feature of the conference was the extent of involvement with, and support by, the civilian legal community. Lake County (Illinois) States Attorney Dennis P. Ryan hailed the progress his office and Fort Sheridan active

duty and reserve JAG's have made towards treatment of cases formerly neglected because of jurisdictional uncertainty.

A panel led by Lieutenant Colonel Michael I. Spak of the 107th JAG Detachment, explained to the guests how interim and periodic reserve IDT and AT at Fort Sheridan grew and expanded to its present fully integrated, year-round program of mutual support. Functional areas for the year round program include legal assistance, military justice, procurement law, administrative law, and claims. The same reservists perform IDT and AT at the same location, doing the same work, fully performing with their active duty counterparts. This system does away with time wasted in in-processing, out-processing, place orientation, mission orientation, and specific instructions. During a five-month period this past year, for example, the reserve components performed 20% of the legal assistance rendered to clients at Fort Sheridan, and over 10% of the total legal workload. It was emphasized that in a time of increasingly severe manpower and resource constraints, deployment of reserve components on a continuing basis could expand both the quantity and quality of legal services.

The entire conference was video taped by FORSCOM, and was highlighted by addresses from Colonel Roy Moscato, SJA, 86th ARCOM; Colonel Peter Nordigian, SJA, 416th ENCOM; Colonel (P) Jack N. Bohm, Chief Judge, USA Judiciary, MOB DES; and Captain James McMenis, Reserve Affairs Department, The Judge Advocate General's School. Closing remarks were delivered by Major General Michael D. Healy, Commander, U.S. Army Readiness Region V.

Brigadier General Edward D. Clapp, Assistant Judge Advocate General for Special Assignments (MOB DES), delivered the after-luncheon remarks.

**Reserve Affairs Section**

*Reserve Affairs Department, TJAGSA*

**Reserve Component Technical Training (On-Site) Schedule Change.**

111, Bates College of Law, University of Houston, from 0800-1700. For additional information with regard to the training, please contact the action officer, Major Donald M. Bishop, (713) 666-8000.

The on-site training scheduled for 26 February 1978 in Houston, Texas will be held in Room

**Index of Staff Training Problems**

*Reserve Affairs Department, TJAGSA*

Following is an index of revised and updated Staff Training Problems available from The Judge Advocate General's School for use by Army Reserve and National Guard units. These problems are intended for inactive duty group training and not as classroom instructional material. Problems may be requested in letter form addressed to Commandant, The Judge Advocate General's School, ATTN: Reserve Affairs Department, Charlottesville, Virginia 22901.

*Problem No.*

*Title*

**Administration Problems**

542 Reports of survey; Standards of accountability and liability.

**Military Justice Problems**

123 Preparation of the legal portion of an investigation annex to the SOP of the Provost Marshal's section.

124 Review by Judge Advocate of Art. 15 punishment, with emphasis on the legality of the imposition of the punishment.

126 Previewing JA 301: "The Military Judge"; preparation of instruction, and a critique of the film.

128 JA 301: "The Military Judge"; preparation of instruction, and a critique of the film.

*Problem No.*

*Title*

129 Previewing TF 27-4863: Article 15; preparation of instruction, and a critique of the film.

130 Proposed delegation of authority to impose nonjudicial punishment under Article 15.

131 Imposition of nonjudicial punishment under Article 15.

132 Disciplinary Action.

150 The right to the presence of counsel and the procedures required when the military police conduct a lineup for the purpose of identifying a military member suspected of murder.

151 The applicability of the Miranda-Tempia pre-interrogation warning requirement in conjunction with the conducting of a consensual search of quarters and personal effects.

152 Legality of service members engaging in the collection buying and selling of pistols, bayonets, and flags found on the battlefield.

153 Required instructions to court-martial and consideration to which deposition testimony is entitled.

154 Limits on who a convening authority may appoint to serve as trial defense

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
	counsel at a general court-martial; Effect on general court-martial where appointed counsel is not a member of the Judge Advocate General's Corps.		sion of the offense arises after a special court-martial has become final.
156	Advice to commanding officer on drafting charges and imposition of punishment, where the accused has apparently assaulted and robbed two service members at the same time and place.	163	Amenability of military offender to punishment subsequent to action by civilian courts.
157	Advice to commanding officer respecting court-martial jurisdiction over National Guardsman whose military service was under "self-executing" orders for alleged criminal conduct occurring both before and after member reverted to a civilian status.	164	Amenability of reserve officer, not on active duty, to court-martial jurisdiction.
158	Existence and validity of defense to obedience of superior's direct but illegal orders where accused claims absence of profit motive or personal gain and fear of the superior issuing the orders.	165	Legality of commander's guidelines on appointment of courts-martial, restricting membership to combat arms officers in grade of captain or above.
159	Recommendation for action on trial record where, during the course of trial, it is indicated that a witness lead the court to believe that he was under charges for robbery and attempted murder when actually he had been granted immunity from trial.	166	Existence of attorney-client privilege when attorney knowingly entered relationship against orders of superior.
160	Admissibility of deposition testimony and former testimony at a court-martial.	167	Effect of coercive threats and force directed against the accused by the victim upon the admissibility of a confession and evidence secured by a subsequent search.
161	Post-trial review of conspiracy conviction where record reveals sufficiency of proof of overt acts, but not overt acts alleged in the specification.	168	Advice concerning the appropriateness of a charge of violation of Article 107, U.C.M.J., where a military member deliberately makes a false statement during a LOD investigation.
162	Recommendation for action where issue of insanity at time of commis-	169	Necessity of an Article 31 warning as a prerequisite to the admissibility of evidence obtained by a consent search.
		170	Power of a court-martial to recommend suspension of a punitive discharge contemporaneous with the announcement of the sentence adjudged.
		171	Interposition of nonjudicial punishment imposed under Article 15, U.C.M.J., as a bar to trial for the same offense.
		172	Violation of an order which conflicts with a service member's religious scruples as an offense cognizable under Article 92, U.C.M.J.

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
173	Legality of proceeding with general court-martial despite accused's refusal to waive the five day waiting period between service of charges and the date of trial.		where such witness will be unavailable at trial.
174	Extent of discretion exercisable by military judge to limit questions during the conduct of <i>-voir dire</i> examination by defense counsel.	350	Advice to a convicted serviceman concerning finality of his conviction by special court-martial.
175	Negating promotion <i>-ab initio</i> by revocation of a promotion order and the commander's reduction power under Article 15, U.C.M.J.	351	Assistance by judge advocate in preparation of charges, referral to proper court, and advice on multiplicity of possible offenses or destruction of military property, violation of lawful order, absence without leave, and breach of restriction.
215	Legality of a proposed procedure for administrative processing of unauthorized absentees, including retroactive assignment to a "paper AWOL company."	352	Allegation of command influence in the trial by special court-martial of an accused who allegedly stole property of commanding general.
216	Problems arising from charge of "contempt toward official" arising out of recently mobilized officer's conversation.	353	Advice from a member of the Staff Judge Advocate Section to the president of a special court-martial on rules of evidence concerning the admissibility of morning reports.
344	Judge Advocate action on a request by out-of-state civil authorities for release of serviceman from military control for trial on criminal charges.	354	Review by Staff Judge Advocate of a regulation requiring submission of accident reports (privilege against self-incrimination) and a court-martial conviction based on the accused's accident report.
345	Amenability of serviceman to trial by court-martial for crime previously prosecuted by another sovereign.	355	Proposed command policies relative to expeditious disposition of offense reports.
347	Legality of search of service member's off-post quarters in United States; coordination of investigation with federal and state officials.	357	The Judge Advocate's review, on appeal of an Article 15 punishment.
348	Problems involving representation by civilian counsel who has no security clearance, of an accused in a trial involving classified information.	359	Disposition of civilians who commit petty offenses on federal reservations.
349	Consideration of available courses of action where an accused refused to accept appointed counsel to represent him in the taking of a deposition of a vital witness in a capital case	360	Apprehension and removal of civilian trespassers from a military reservation by military police.
		395	Preparation of guidelines for use by military police in interrogation of suspects in light of <i>Miranda v. Arizona</i> and <i>United States v. Tem-pia</i> .

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
402	Opinion of Staff Judge Advocate as to possible action by commander against officer who failed to report for scheduled unit movement.	529	Preparation of a reprimand to be included in the promulgating order of a general court-martial.
403	Charges against enlisted man alleging he missed the movement of his unit in violation of Article 87, U.C.M.J.	530	Power of convening authority to commute, with accused's consent, a sentence of confinement to a punitive discharge.
520	Imposition of Article 15 punishment by commander of a joint task force.	531	Processing a court of military review decision in the field and preparation of supplemental court-martial orders.
521	Legality of providing counsel to represent the government at the Article 32 Investigation.	532	Compliance with two corrective action letters from The Judge Advocate General's noting errors in the action of the convening authority upon sentences adjudged by courts-martial.
522	Review of summary court-martial conviction of carnal knowledge; legality of sentence; desirability of instructional program for commanders dealing with referral of offenses to appropriate courts.	543	AWOL; Legality of a sentence of reduction without confinement.
523	Admissibility at trial by court-martial of psychiatric testimony offered by government and based on an interview with accused not prefaced with Article 31 or Miranda-Tempia warnings.	544	Use of general character evidence in a special court-martial prior to findings.
524	Admissibility in a court-martial of a deposition of a witness who proves to be unavailable where defense has failed to cross-examine the deponent.	546	Rehabilitation of a victim's character in a special court-martial when there has been no impeachment.
525	Quantum of evidence necessary to corroborate a pre-trial confession to a violation of Article 115 of the Code.	547	Surprise in a special court-martial caused by a convicted accomplice's denial of guilt.
526	Recommendations for action where, during the course of a trial by court-martial, it is discovered an officer not regularly appointed is participating as a member of the court.	548	Court-martial of a minor who fraudulently enlisted.
527	Advice on action to be taken against members of an Infantry company that has deserted in the face of the enemy.	635	Legality of tapping the office telephone of a serviceman overseas and the telephone of the serviceman's mistress; placing recording equipment in a civilian hotel room and in the serviceman's on-post quarters.
528	Appointment of Court-Martial.	636	Admissibility in a trial by court-martial of results of a blood-alcohol test administered without conscious consent of accused.
		637	Admissibility in a court-martial of evidence resulting from a search conducted by foreign officials and the

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
	effect of cooperation, knowledge, or participation of U.S. military authorities in the investigation.	365	Implementation of the policy favoring firms in labor surplus areas.
638	Problem involving the defense of entrapment raised as a result of investigative techniques proposed by a CID agent.	366	Compliance with the restrictions designated to encourage procurement from United States firms.
641	Effect on court-martial of a grant of immunity to the accused by Belgium.	367	Implementation of the policy favoring procurement from small businesses.
<b>Procurement Problems</b>			
217	Factors governing the selection of the type of contract to be utilized in the procurement of supply items.	368	Providing a contractor with financial aid under the Defense Contract Financing Regulations.
218	Compliance with requirements governing timely submission of bids.	369	The assignment by the contractor of receivables under a government contract.
219	Responsiveness of a bid that deviates from the requirements of the invitation for bids.	370	The government's right to assess "excess costs" against a contractor whose fixed-price supply contract has been properly terminated for default; and a contractor's right to appeal from such assessment.
220	Reinstatement of the low bid after all bids have been rejected.	371	Familiarization with the government's rights under a standard fixed-price supply contract in the event of a contractor's failure to make timely delivery.
221	Obligation for a certain purpose of funds appropriated in a Department of Defense Appropriation Act.	372	Familiarization with the government's rights under a standard fixed-price supply contract in the event of a contractor's failure to make progress so as to endanger timely performance.
361	Familiarization with delegation and implementation of authority to amend contracts without consideration to correct mistakes and to formalize informal commitments. (PL 85-804, ASPR § XVII).	373	Familiarization with the contracting officer's authority to act on a claim for additional compensation for work beyond the requirement of the contract done on the order of a government representative who lacked actual authority to modify the contract.
362	Familiarization with the concept of "equitable adjustment in contract price" and its application to contract modifications ordered pursuant to the Changes clause of a standard fixed-price supply contract.	374	Familiarization with the contracting officer's authority to act on a contractor's claims for extra costs attributable to government caused
363	Adequacy of specification and responsiveness of bid in a formally advertised procurement.		
364	Correction of a mistake in a bid on formally advertised procurement.		

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
	delay under a contract that does not contain a Suspension of Work clause.	206	Disposition of reservist under indictment by local court at time of call to active duty.
375	Status of the government as a stakeholder of funds due a bankrupt contractor, vis-a-vis, creditors of the bankrupt.	207	Disposition of USAR member on active duty for training whose unit is called to active duty.
376	Remedies of a subcontractor against the government or the prime contractor.	208	Disposition of reservist ordered to active duty who is not MOS qualified upon mobilization.
377	Control of subcontractor by the contracting officer.	209	Action by State when member of National Guard goes AWOL while on active duty. (NGUS units.)
378	Methods of settlement of Termination for Convenience claims under government contracts.	276	Line of duty determination. Injury occurred in course of weekend pass when service member who voluntarily engaged in a fight was injured by an intervening third party.
<b>Administrative and Civil Law Problems</b>			
101	Line of duty determination. Injury resulting from horse-play with weapon.	277	Legality of the solicitation of funds from Service members to establish and support a "Vietnamese Orphans Fund."
103	Advice to post commander respecting authority to prosecute civilian motorists who disregard post traffic regulations.	278	Authority for patronage of Army PX facilities by civilian fire department personnel employed by the government.
155	Proposed Court-Martial of conscientious objector.	279	Dissolution of Post flying club. Assessment of club members for club's liability reflected by predissolution audit.
201	Delay of Ready Reservist from involuntary order to active duty based on community hardship.	280	Disposition of non-commissioned officer whose conduct indicates a dereliction of duty in his performance as supply officer. Utilization of administrative and nonjudicial reduction authority in the case of a Sergeant E-5.
202	Standby Reservist's request for delay in complying with involuntary order to active duty based on personal hardship.	281	Disposition of service member who enlisted at age 16 and committed offenses under the Uniform Code both before and after turning 17 years old.
203	Delay in reporting to unit assembly area when unit is ordered to active duty.	282	Authority of post commander to direct appropriate deduction from service member's pay and thereby dispose of incident in which enlisted
204	Disposition of member refusing to comply with active duty orders.		
205	Evasion of call to active duty by commission of minor offenses.		

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	vehicle driver concedes he wrongly caused damage to commander's government sedan.		military member while not acting within the scope of his official duties.
303	Quarters allowance. Recovery of quarters allowance paid members on account of a purported marriage later annuled.	322	Off-duty employment of military personnel in commercial enterprises.
307	Elimination of officer for moral and professional dereliction. Some general rules of evidence.	323	Use of military personnel to maintain order at parade.
309	Disposition of individual who refuses medical treatment.	324	Line of duty determination. Injury incurred while absent from duty without authority.
310	Request by civil authorities for assistance in capturing criminal.	325	Right of Post Commander to regulate traffic.
311	Release of military personnel to civil authorities for trial.	401	Commander's responsibility and action upon discovery of a possible loss or compromise of classified material.
312	Loan of a privately owned vehicle to the U.S. Army for recruiting and like purposes.	545	Use of army medical facilities by dependents who refuse blood transfusions on religious grounds.
313	The extent of an installation commander's responsibility toward an Army Flying Club established as sundry fund under AR 230-5.	601	Whether the establishment of a private association, whose purpose is to support an existing sundry fund, is legally objectionable.
315	Release of criminal investigation reports and medical records to civilian police.	602	Effect of a proposed open mess with predominant civilian employee membership.
316	Anti-obesity orders and directives.	603	Line of duty determination. Injury resulting from playing Russian Roulette.
317	Solicitation of insurance on Army installations.	605	Effect of minority enlistment.
318	Whether private associations occupying space on an installation are entitled to receive utilities at government expense.	606	Essentials of "constructive" enlistment.
319	Final disposition of property held by the government as evidence.	607	Commercial sale of a missile-firing film made by a military member.
320	Disposition of lost or abandoned property found by a military member acting within the scope of his official duties.	608	Whether widow, who had been convicted of killing her Army husband, should be denied a Uniformed Services Identification and Privilege Card.
321	Disposition of lost or abandoned private property found on post by a	701	Whether a recording contract between a record company and an Army welfare fund for the release and sale of a record album made by a

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
	Division Choral group would be legally objectionable.	214	Torts on federal enclaves and the "law of the place" under Federal Tort Claims Act.
702	Release of reservist from active duty pending appellate review of court-martial conviction.	326	Proper claimants, scope of employment, and the "incident to service" rule under the Federal Tort Claims Act.
703	Request of Reserve Officer member of recently demobilized local unit to use Officers Open Mess facilities of active military post during a unit reunion.	327	Claims under the Federal Tort Claims Act arising from operation of nonappropriated fund activities.
704	Disposition of unit nonappropriated funds and property upon demobilization of unit. (Also the effects of such regulations as to NG units.)	328	"Discretionary functions" and other government defenses under the Federal Tort Claims Act.
<b>Claims Problems</b>			
108	Preparation of an SOP checklist for the investigation and processing of claims under the Military Personnel Claims Act and the Military Claims Act.	329	Conflict of laws and interstate torts under Federal Tort Claims Act.
109	Preparation of an SOP for the investigation and processing of claims under the National Guard Claims Act. (NGUS units).	330	Off-post motor vehicle accident claims of military personnel under the Federal Tort Claims Act.
110	Preparation of an SOP for the investigation and processing of maneuver claims.	331	Damage occurring on military reservations to private motor vehicles of military personnel under the Military Personnel Claims Act and the Military Claims Act.
111	Claims settlement authorities under the Army Claims Program.	332	Determination of whether a claim may be settled under the Military Claims Act or the Federal Tort Claims Act.
112	Scope of employment determinations and non-combat activities under National Guard Claims Act.	333	Survivors' claims under the Military Claims Act, and citizenship limitations on survivors' claims under the Foreign Claims Act.
210	Elements of damage payable to claimants against the United States.	334	The effects of recovery from insurers, carriers, and contractors under the Military Personnel Claims Act.
211	Recovery of lost property by the claimant following payment of the claim.	335	Proper claimants, the "reasonable, useful or proper" rule, and substantiation of the value of claims under the Military Personnel Claims Act.
212	Claims by civilians for the theft of their property by military personnel.	337	Survivors' claims under the Military Personnel Claims Act.
213	Territorial applicability of the Federal Tort Claims Act.	338	Claims for maneuver damages under the Military Claims Act.

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
339	The "incident to service" rule and proper claimants under the Military Claims Act.		scattered individuals of unit directed to report for active duty in 30 days.
340	Claims under Article 139 of the Uniform Code of Military Justice. ("Watermelon," etc., Claims).	222	TF 15-3286, Your Legal Assistance Officer; preparation of introduction, and critique of the film.
342	Claims for damages to property sent to the Post Laundry.	223	Persons eligible for legal assistance.
343	Claims against the United States by dependents of military personnel for alleged mal-practice in post hospitals.	224	Attorney-client relationship in the legal assistance field.
630	Storage losses under the Military Personnel Claims Act.	225	Termination of a lease under SSCRA.
631	The United States as a Receiving State under NATO-SOFA for purposes of the applicability of the Military Claims Act.	226	Determining priority of liens on a service member's residence.
632	Claims arising from the activities of foreign nationals employed by the United States under the Foreign Claims Act.	227	Entitlement to relief under SSCRA while AWOL.
633	Claims of friendly aliens who are enemy nationals under the Foreign Claims Act.	228	Individuals entitled to a stay of proceedings under SSCRA.
634	Expeditious relief for needy claimants under the Foreign Claims Act.	229	Grounds for a stay of proceedings under SSCRA.
	<b>Legal Assistance Problems</b>	230	Criteria for a stay of proceedings under SSCRA.
133	Preparation of Legal Assistance SOP.	231	Application of SSCRA to conditional sales contracts.
135	Service member's indebtedness; a cooperative and informed approach to problems existing at time of mobilization.	232	Proceedings under Chapter 13 of the Bankruptcy Act of 1938 including discussion of dishonorable failure to pay debts under Article 134, U.C.M.J.
136	Preparation of administrative plan designed to permit expeditious handling of large volume requests for wills and powers of attorney.	379	Referral of personnel by legal assistance officers to civilian attorneys within the United States.
137	Assistance of local bar in providing legal assistance to geographically	381	Indebtedness of Army Personnel.
		382	Abatement of public nuisance under SSCRA.
		383	Eviction proceedings under the SSCRA.
		384	Deductibility of items of uniform expense for federal income tax purposes.

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
385	Effect of a serviceman registering to vote in a state as effecting his domicile.		U.S. serviceman in bastardy proceedings.
386	Deferment of taxation on gains on residential property sales under the IRC of 1954.	705	Planning and preparing an educational program designed to provide a complete legal check list for all unit members upon deactivation and to assist the individual in an orderly transition to inactive duty.
388	Cancellation of commercial contracts under SSCRA.		
389	Default judgments under SSCRA.		
390	The applicability of the staying provisions of SSCRA to liability insurers of serviceman.		
391	Taxability of personal property by the state of residence under the SSCRA.		
392	Special appearances under SSCRA.		
394	Preparation of wills under the Legal Assistance Program.		
534	Indebtedness of Army personnel.		
535	Guaranty of life insurance premiums under SSCRA.		
536	A military plaintiffs right to a stay of proceedings under SSCRA.		
537	Changing beneficiaries of U.S. Government life insurance.		
538	Referral by legal assistance officers to civilian attorneys outside the Continental United States.		
539	Channels of communication in the Legal Assistance Program.		
643	Burden of proof upon a motion for a stay of proceedings under SSCRA.		
644	Application of SSCRA to criminal proceedings.		
645	Applicability of the SSCRA to an accommodation maker of a note with a serviceman.		
646	Effect of foreign judgments against		
			<b>Civil Disturbance Problems</b>
		113	The role of the Army in the civil disaster relief.
		114	The necessary prerequisites for "federal" martial law.
		115	Military government, martial rule, and military law distinguished.
		116	The rule of reasonable necessity (orders promulgated under military authority in martial rule situations).
		117	Martial rule and closure of the civilian courts (non-federal martial law).
		118	Martial rule and suspension of the writ of habeas corpus.
		119	Civil and criminal liability of military personnel for actions taken under martial rule.
			<b>International Law Problems</b>
		120	Preparation of a two or three-hour lecture-type presentation on "Internal Defense and Internal Development Operations" designed for non-lawyer audience.
		501	The right of belligerents to requisition neutral property essential to the conduct of hostilities.
		502	The right of reprisal against military personnel under the law of war.
		503	Ruses under the laws of war.

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
504	The giving of parole under the Code of Conduct, Field Manual 27-10, and the Uniform Code of Military Justice.	517	Pillage under the laws of war and the Uniform Code of Military Justice.
505	Military passports, safe-conducts and safeguards under the laws of war and the Uniform Code of Military Justice.	518	Neutralized zones and "open cities" under the 1949 Geneva Civilians Convention.
506	"Unprivileged belligerency" and the right of reprisal.	519	Sufficiency of claims in foreign language and the utilization of prisoners of war as interpreters.
507	Requisitions, seizures, and confiscations of the property of enemy nationals.	541	Destruction of captured enemy material which includes quartermaster, medical and ordnance supplies.
508	Right of Division Commander to request ceasefires and parlemenaries under the law of war.	551	Status of Forces Agreements and Host-Guest Relationships.
509	Jurisdiction to try by court-martial foreign nationals who are assisting United States Army Units.	553	Tax liability to German authorities of selected categories of personnel employed by various agencies and activities of United States NATO forces stationed in the German Federal Republic.
510	Disposition of defectors from United States forces who are captured with Aggressor.	609	Provision under international law for repeal by allied occupying powers of economic penal law of occupied communist state.
511	Jurisdiction of the United States to try Aggressor military personnel for war crimes, when such personnel have already been tried by Aggressor courts-martial.	610	Evaluation of reports concerning alleged war crimes of captured military aggressor personnel.
512	Legality of permitting "courts" to be held by prisoners of war including punishments imposed by PW's.	612	Offenses against the Uniform Code of Military Justice by American prisoners of war.
513	Successful and unsuccessful escapes from prisoner of war camps.	613	Sentencing procedures, rights of appeals, and incarceration of convicted war criminals under the 1949 Geneva Convention Relative to the Treatment of Prisoners of War and reservations thereto.
514	Prohibited weapons under the law of war.	614	Applicability of the Uniform Code of Military Justice to Aggressor prisoners of war.
515	Preparations of an SOP for communicating and coordinating activities with the Protecting Power for Aggressor prisoners of war and sick and wounded.	615	Status of the law of a friendly power which has been liberated by American forces.
516	Preparation of an SOP for the establishment and conduct of judicial proceedings involving prisoners of war.		

<i>Problem No.</i>	<i>Title</i>	<i>Problem No.</i>	<i>Title</i>
616	Status of prisoners of war who refuse repatriation.	623	Termination of the applicability of the 1949 Geneva Conventions.
617	Utilization of prisoners of war labor, and waiver of rights under the 1949 Geneva Convention Relative to the Treatment of Prisoners of War.	624	Imposition of local excise tax on supplies purchased by American PX located in foreign country.
618	Political and religious educational activities in prisoner of war camps.	625	Rights of a belligerent occupant under the 1949 Geneva Civilians Convention.
619	Disciplinary and judicial punishments for prisoners of war under the 1949 Geneva Convention Relative to the Treatment of Prisoners of War.	626	Response of commanders to orders of attachment or garnishment served by foreign bailiffs against the United States or its agencies or personnel.
620	Criteria for prisoner of war status and procedures for establishing competent tribunals to decide whether captured personnel are entitled to that status.	627	Insurgencies under the 1949 Geneva Conventions.
621	The rights of noncombatant enemy national before American military government courts.	629	The use of poisons under the law of war.
622	Status of the laws of an enemy belligerent power occupied by American forces.	639	Applicability of NATO-SOFA to court-martial jurisdiction over servicemen overseas.
		642	Advice on amendability of a U.S. service member to trial by court-martial after he has been tried and convicted by Belgian authorities pursuant to NATO-SOFA.

### CLE News

#### 1. TJAGSA CLE Courses.

March 13-17: 7th Law of War Instructor Course (5F-F42).

April 3-7: 17th Federal Labor Relations Course (5F-F22).

April 3-7: 4th Defense Trial Advocacy Course (5F-F34).

April 10-14: 40th Senior Officer Legal Orientation Course (5F-F1).

April 17-21: 8th Staff Judge Advocate Orientation Course (5F-F52).

April 17-28: 1st International Law I Course (5F-F40).

April 24-28: 5th Management for Military Lawyers Course (5F-F51).

May 1-12: 7th Procurement Attorneys' Course (5F-F10).

May 8-11: 7th Environmental Law Course (5F-F27).

May 15-17: 2d Negotiations Course (5F-F14).

May 15-19: 8th Law of War Instructor Course (5F-F42).

May 22-June 9: 17th Military Judge Course (5F-F33).

June 12-16: 41st Senior Officer Legal Orientation Course (5F-F1).

June 19-30: Noncommissioned Officers Advanced Course Phase II (71D50).

July 24-August 4-:76th Procurement Attorneys' Course (5F-F10).

August 7-11: 7th Law Office Management Course (7A-173A).

August 7-18: 2d Military Justice II Course (5F-F31).

August 21-25: 42d Senior Office Legal Orientation Course (5F-F1).

August 28-31: 7th Fiscal Law Course (5F-F12).

September 18-29: 77th Procurement Attorneys' Course (5F-F10).

**2. TJAGSA Course Prerequisites and Substantive Content.** Information on the prerequisites and content of TJAGSA courses is printed in CLE News, *The Army Lawyer*, December 1977, at 42.

### 3. Civilian Sponsored CLE Courses.

#### MARCH

2-3: PLI, Legal Aspects of Union Organizational Campaigns, Americana Hotel, 7th Ave. at 52d St., New York, NY 10019. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

6-8: Georgetown Univ. Continuing Management Education Seminars, Effective Administrative Writing, Ground Floor, RCA Building, 1901 N. Moore St., Rosslyn, VA. Contact: Continuing Management Education—SSCE, Georgetown Univ., Washington, DC 20057. Phone (703) 525-6300. Cost: \$325.

7-9: LEI, Law of Federal Employment Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St., NW. Washington, DC 20415. Phone (202) 254-3483.

9-10: PLI, Strikes, Stoppages and Boycotts,

Sir Francis Drake Hotel, 450 Powell St., San Francisco, CA 94101. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

12-14: FBA-BNA: Annual Government Contracts Briefing Conference, Barclay Hotel, Philadelphia, PA. Contact: Conference Secretary, Federal Bar Association, Suite 420, 1815 H St. NW, Washington, DC 20006. Phone (202) 638-0252.

12-17: NCDA, Investigators School (location to be announced). Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

13-15: Aspen Systems, Inc., Seminar on Medical Staff Laws and Bylaws, San Juan, PR. Contact: Aspen Systems, Inc., 20010 Century Blvd., Germantown, MD 20767.

14-15: ABA Section of Litigation National Institute, Trial of an Equal Employment Opportunity Case, Williamsburg, VA. Contact: ABA National Institutes, ABA, 1155 E 60th St., Chicago, IL 60637. Phone (312) 947-3950.

14-18: NCDA, Trial Techniques, Los Angeles, CA. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

16-18: ALI-ABA—Emory Univ. School of Law, Practice under the Federal Rules of Evidence: Recent Developments, Atlanta, GA. Contact: Donald M. Maclay, Director, Courses of Study, ALI-ABA Committee on Continuing Professional Education, 4025 Chestnut St., Philadelphia, PA 19104. Phone (215) 387-3000.

17-18: ABA Section of Insurance, Negligence, and Compensation Law National Institute, Medical Legal Aspects of Litigation, New Orleans, LA. Contact: ABA National Institutes, ABA, 1155 E 60th St., Chicago, IL 60637. Phone: (312) 947-3950.

18-20: NCCDLPD, Defender Management Workshop, Denver CO. Contact: Registrar, National College of Criminal Defense Lawyers and Public Defenders, Bates College of Law,

Univ. of Houston, 4800 Calhoun Blvd., Houston, TX 77004. Phone (713) 749-2283.

18-25: CPI, Trial Advocacy Seminar, Fort Myers, FL. Contact: Court Practice Institute, Inc., 4801 W. Peterson Ave., Chicago, IL 60646. Phone (312) 725-0166. Cost: \$700.

20-24: Pittsburgh Institute of Legal Medicine, Medical-Legal Seminar, Lion Square Lodge, Vail, CO. Contact: Cyril H. Wecht, M.D., J.D., Director, Pittsburgh Institute of Legal Medicine, 1519 Frick Building, Pittsburgh, PA 15219.

20-24: George Washington Univ. National Law Center, Contract Administration [problems which arise during performance of government contracts], George Washington Univ. Library, 2130 H St. NW, Room 729, Washington, DC. Contact: Government Contracts Program, George Washington Univ., 2000 H St. NW, Washington, DC 20052. Phone (202) 676-6815. Cost: \$475.

21-23: LEI, Civil Rights Litigation Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone (202) 254-3483.

28-30: LEI, Legal Research for Paralegals Seminar, Washington, DC. Contact: Legal Education Institute—TOG, U.S. Civil Service Commission, 1900 E St. NW, Washington, DC 20415. Phone (202) 254-3483.

#### APRIL

6-7: PLI, Legal Aspects of Union Organizational Campaigns, Mark Hopkins Hotel, No. 1

Nob Hill, San Francisco, CA 94108. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

6-9: 9th National Conference on Women and the Law, Peachtree Plaza Hotel, Atlanta, GA. Contact: 9th National Conference on Women and the Law, Women Law Students' Association, Univ. of Georgia School of Law, Athens, GA 30602. Phone: (404) 542-7669.

9-12: NCDA, Crimes Against Persons, Orlando, FL. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

13-14: PLI, Strikes, Stoppages and Boycotts, Host International Hotel, P.O. Box 24107, Tampa, FL 33622. Contact: Practising Law Institute, 810 7th Ave., New York, NY 10019. Phone: (212) 765-5700. Cost: \$175.

17-18: Georgetown Univ. Continuing Management Education Seminars, E.E.O./A.A. (Equal Employment Opportunity/Affirmative Action), Ground Floor, RCA Building, 1901 N. Moore St., Rosslyn, VA. Contact: Continuing Management Education—SSCE, Georgetown Univ., Washington, DC 20057. Phone: (703) 525-6200. Cost: \$250.

23-28: NCDA, Advanced Organized Crime, Dallas, TX. Contact: Registrar, National College of District Attorneys, College of Law, Univ. of Houston, Houston, TX 77004. Phone (713) 749-1571.

### Judiciary Notes

#### *U.S. Army Judiciary*

**Telephone Number Change, Defense Appellate Division.** Due to a recent relocation within Defense Appellate Division, USALSA, all telephone inquiries regarding the status of a court-martial case on appeal should be directed to the Administrative Branch, (202) 756-2277,

AUTOVON 289-2277.

The telephone number for Colonel Clarke, Chief, Defense Appellate Division, and Major Sims, Executive Officer, Defense Appellate Division, is (202) 756-1807, AUTOVON 289-1807.

**Criminal Law Section**

*Criminal Law Division, OTJAG*

**Appeal to TJAG from Denial by Commander, USALSA, of Request for Individual Military Defense Counsel.** During the past year the Judge Advocate General has received several appeals from decisions by Commander, U.S. Army Legal Services Agency (USALSA), denying requests from the field that certain counsel assigned to that agency be made available to act as individual military defense counsel. The applicable rule from paragraph 48b, MCM, 1969 (Rev. ed.) is:

When a determination is made within a military department that request counsel is

not available, unless made at departmental level or by a commanding officer or supervisor immediately subordinate to the departmental level, that determination is subject to appeal to the requested counsel's next higher commanding officer or level of supervision. *Appeals may not be made which require action at departmental or higher level.* (Emphasis added.)

As USALSA is a field operating agency directly under The Judge Advocate General, nonavailability determinations made by Commander, USALSA, are not appealable.

**JAGC Personnel Section**

*PP&TO, OTJAG*

**1. Assignments**

**LIEUTENANT COLONEL**

<i>NAME</i>	<i>FROM</i>	<i>TO</i>	<i>APPROX DATE</i>
TOOMEPUU, Tonu	USAG Ft Meade, MD	Elec Cmd Ft Monmouth, NJ	Feb 78

**MAJORS**

BATES, Bernie L.	Eng Ctr Ft Belvoir, VA	USAG Ft Meade, MD	Jan 78
TAYLOR, Daniel E.	US Embassy, Paris APO 09403	27th Adv Crs TJAGSA	Aug 78

**CAPTAINS**

BRYANT, Thomas L.	CAC Ft Leavenworth, KS	USAG Ft Detrick MD	Mar 78
CAMERON, Dennis S.	XVIII ABN Corps, Ft Bragg, NC	USALSA	Feb 78
CARAZZA, Dennis M.	25th Inf Div, Hawaii	MTMC, Bayonne, NJ	Jan 78
CONNELL, Richard E.	Elec Cmt, Ft Monmouth, NJ	USALSA	Mar 78
COSGROVE, Charles A., Jr.	1st Armd Div, Ft Hood, TX	USALSA	Mar 78

## CAPTAINS

CULPEPPER, Van Noy	101st ABN Div Ft Campbell, KY	Korea	Mar 78
FARAGUNA, Joseph R.	MTMC, Bayonne, NJ	Korea	Mar 78
PARSONS, Gregory L.	101st ABN Div, Ft Campbell, KY	Korea	Feb 78
ROTHLEIN, Julius	101st ABN Div, Ft Campbell, KY	USALSA	Mar 78
SWIHART, John B.	Stu Det, Ft Ben Harrison, IN	USAG, Ft Meade, MD	Apr 78
WEAISE, James H.	Avn Trp Bde, Ft Rucker, AL	USALSA	Mar 78
ZIEGLER, Edward R.	Support Cmd, Hawaii	Korea	Mar 78

## 2. RA Promotion.

## MAJOR

Colby, Edward L., Jr.	31 Jan 77
	3 Jun 77

## MAJOR

Altieri, Richard T.	13 Dec 77
DePue, John F.	7 Dec 77
Hamilton, John R.	6 Dec 77
Hancock, Jeffrey H.	3 Dec 77
Hopkins, Gary L.	6 Dec 77
Maron, Andrew W.	12 Dec 77
Vissers, Christian	11 Dec 77

## 3. AUS Promotions.

## COLONEL

Fontanell, David A.	2 Dec 77
Garner, James G.	2 Dec 77

## LIEUTENANT COLONEL

Aldinger, Robert R.	12 Dec 77	Jones, Robert E.	2 Dec 77
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## CW4

## Current Materials of Interest

## Articles

Kenneth M. Murchison, *The Impact of the Soldiers' and Sailors' Civil Relief Act on State Taxation of Mobile Homes*, 19 A.F. L. REV. 235 (1977).

Thomas E. Shea, *Architect-Engineer Liability Suits by the Government, A Case for Expanding Jurisdiction of the A.S.B.C.A.*, 19 A.F. L. REV. 250 (1977).

LTC Larry W. Shreve, *The Impact of Federal Court Decisions Upon the Removal of Air*

*Force Civilian Employees*, 19 A.F. L. REV. 272 (1977).

CPT Lester W. Schiefelbein, Jr., *Use of Escalation Clauses in Department of Defense Contracts*, 19 A.F. L. REV. 300 (1977).

LTC Max S. Bowlden, *Off-Duty Employment of Enlisted Personnel: Restraints on Competition with Civilians*, 19 A.F. L. REV. 321 (1977).

Law Scope: Criminal Justice, "Forced Enlistments" Plague the Army, 63 A.B.A.J. 1699 (1977).

Gerson, *War, Conquered Territory, and Military Occupation in the Contemporary International Legal System*, 18 HARV. INT'L L.J. 525 (1977).

Note, *Criminal Liability for Possession of Nonusable Amounts of Controlled Substances*, 77 COLUM. L. REV. 596 (1977).

Note, *Federal Executive Immunity from Civil Liability in Damages: A Reevaluation of Barr v. Matteo*, 77 COLUM. L. REV. 625 (1977).

Comment, *Conflict of Interests in Multiple Representation of Criminal Co-Defendants*, 68 J. CRIM. L. & C. 226 (1977).

Note, *The Fourth Amendment Abroad: Civilian and Military Perspectives*, 17 VA. J. INT'L L. 515 (1977).

Fidell, *Judicial Review of Presidential Rulemaking Under Article 36: The Sleeping Giant Stirs*, 4 MIL. L. REP. 6049 (1976).

**Case Note**

United States v. Frederick and the ALI Test, OFF THE RECORD, Issue No. 70, 8 Nov. 1977, at 12.

**Book Reviews**

CPT Frank S. Dodge, *Book Review*, 19 A.F. L. REV. 339 (1977). [Review of ANDREW VON HIRSCH, DOING JUSTICE.]

CPT Jerome M. Harris, *Book Review*, 19 A.F. L. REV. 340 (1977). [Review of DOROTHY SCHAFFTER, "WAR" AND LIFE INSURANCE CONTRACTS: JUDICIAL INTERPRETATION AND ITS MEANING 1946-1975.]

**Current Military Justice Library**

- 4 M.J. No. 3
- 4 M.J. No. 4
- 4 M.J. No. 5

**Errata**

The November issue of *The Army Lawyer* inaccurately reported on page 23 the reassignment of CPT Robert H. Long, Jr., from "7th Rgn Crim Inv" to the 27th Advanced Class. CPT James D. Long, Jr., is the CPT Long pending assignment to the 27th Advanced Class.

The printer rearranged the RA Promotions list in the JAGC Personnel Section in the January 1978 issue of *The Army Lawyer*. The editor extends his apology to the officers concerned. The correct list is:

**5. RA Promotions.**

**LIEUTENANT COLONEL**

- DOWNES, Michael M. 15 Dec 77
- DUDZIK, Joseph A. 14 Sep 77
- GREEN, James L. 14 Sep 77

- HOLDAWAY, Ronald M. 24 Aug 77
- KENNY, Peter J. 13 Sep 77
- MAY, Ralph J. Jr. 14 Sep 77
- McBRIDE, Victor G. 12 Aug 77
- RUSSELL, George G. 10 Oct 77
- SCHIESSER, Charles 15 Sep 77
- WITT, Jerry V. 15 Jul 77
- WOLD, Pedar C. 29 Oct 77

**MAJOR**

- ARMSTRONG, Henry J. 10 Oct 77
- DE GIULIO, Anthony P. 1 Oct 77
- DEMETZ, Robert A. 1 Oct 77
- GREEN, Herbert J. 13 Oct 77
- HIGGINS, Bernard F. 12 Oct 77
- MAGERS, Malcolm S. 7 Oct 77

**CW4**

- KOCEJA, Daniel P. 6 Oct 77

By Order of the Secretary of the Army:

Official:

**J. C. PENNINGTON**  
*Brigadier General, United States Army*  
*The Adjutant General*

**BERNARD W. ROGERS**  
*General, United States Army*  
*Chief of Staff*

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